

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Civil No. 09-2018-CV-00378

Plaintiff,

-vs-

JUDGMENT

COLLIN STREHLOW, doing business as
NAILEDIT HOME IMPROVEMENTS,

Defendant.

CPAT 160192.002

[¶1] This action came on before the Honorable Wade L. Webb, Judge of the Cass County District Court, South Central Judicial District, on a Motion for Summary Judgment, filed by Plaintiff, the State of North Dakota, on the relation of Wayne Stenehjem, Attorney General, and served upon Defendant by mail on January 31, 2018. Defendant failed to respond in opposition to the Motion for Summary Judgment.

[¶2] The Court, having reviewed its file and records herein, including the Motion for Summary Judgment with supporting documents, and being fully advised in the premises, having made and entered its Findings of Fact, Conclusions of Law and Order for Summary Judgment; IT IS NOW ORDERED, ADJUDGED AND DECREED:

A. Plaintiff's Motion for Summary Judgment is granted.

B. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the contractor law, N.D.C.C. § 43-07-02, for engaging in the business or acting in the capacity of a contractor in North Dakota without

first having a license when the cost, value, or price per job exceeded the sum of four thousand dollars.

C. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for abandoning contracts without legal excuse after a deposit of money or other consideration has been provided in violation of N.D.C.C. § 43-07-14(1)(a).

D. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for diverting funds or property received under express agreement for the prosecution or completion of a specified contract, or for a specified purpose in the prosecution or completion of any contract, and applying or using funds and property for another contract obligation or to defraud or deceive creditors or the owner in violation of N.D.C.C. § 43-07-14(1)(b).

E. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in excess of three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

F. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for failing to refund fully a contracting party's advance payment where a rebuttable presumption of abandonment has arisen and a contracting party has made a request for a refund in violation of N.D.C.C. § 43-07-14(1)(f).

G. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

H. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

I. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

J. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be enjoined and

restrained from the advertising or sale of contracting and home improvements, repairs, or services in accordance with paragraph K.

K. That, pursuant to N.D.C.C. § 51-15-07, Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work. Notwithstanding the permanent injunction, Defendant may engage in future contracting services if Defendant applies to the Attorney General and the Court to lift the permanent injunction and the Court finds Defendant has fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Three or more years have expired since the entry of judgment herein;
2. Defendant has paid in full all restitution to consumers pursuant to the judgment herein;
3. Defendant has paid in full restitution to all consumers that have paid Defendant advance payments for services not performed or merchandise not delivered in the state of North Dakota;
4. Defendant has paid all amounts owed to the Attorney General pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendant, or after a hearing, that Defendant is sufficiently rehabilitated pursuant to the terms and conditions herein, the Defendant, upon order of the Court, may engage in contracting provided they have obtained a Contractor License pursuant to

N.D.C.C. ch. 43-07 and has complied with all contractor licensing requirements appropriate and necessary for the work to be undertaken by him.

“Pay in full” or “paid in full” mean that all amounts must be paid, and does not include any settlement, forgiveness, compromise, reduction, or discharge of any of the debts or refund obligations.

L. That in the event Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is lawfully engaged in contracting pursuant to the terms in this judgment, said Defendant, pursuant to N.D.C.C. § 51-15-07 and for a period of three years after becoming, lawfully engaged in contracting, is enjoined and restrained from soliciting or accepting from consumers advance payments or consumer deposits in excess of ten percent of the total contract price in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3).

M. That, pursuant to N.D.C.C. § 47-25-02(3), Defendant’s trade name, NailedIt Home Improvements, is ordered cancelled for Defendant’s use of the trade name to engage in violations of N.D.C.C. chs. 43-07 and 51-15.

N. That Plaintiff shall have Judgment against Defendant Collin Strehlow in the amount of \$2,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

O. That Plaintiff shall have Judgment against Defendant Collin Strehlow in the amount of \$3,000.00 for costs, expenses, and attorney’s fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

P. That Defendant Collin Strehlow, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been acquired by Defendant by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

Q. The Judgment entered shall be a Judgment for which execution may issue.

R. Interest shall accrue on this Judgment in accordance with the interest rate on judgment as provided by N.D.C.C. § 28-20-34.

Dated this _____ day of _____, 2018.

CLERK OF DISTRICT COURT

Signed: 3/13/2018 2:35:55 PM

Dawn Bealinski, Deputy

By: _____

I. FINDINGS OF FACT

[¶3] Defendant does not hold a North Dakota contractor's license.

[¶4] Defendant owns the trade name "NailedIt Home Improvements," and registered it with the North Dakota Secretary of State on January 26, 2017. NailedIt Home Improvements' last address provided to the Secretary of State's Office is 3111 46th Ave. S., Fargo, ND 58104-6659.

[¶5] NailedIt Home Improvements does not hold a contractor's license.

[¶6] While unlicensed Defendant engaged in the business and acted in the capacity of a contractor in North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars.

[¶7] Collin Strehlow ("Strehlow") is a citizen of North Dakota and is the sole owner and operator of NailedIt Home Improvements.

[¶8] On or about July 10, 2016, Defendant, doing business as NailedIt Home Improvements, entered into a contract with North Dakota consumers Kevin and Luci Terry, 5272 8th Court W, West Fargo, ND 58078, to build a 14' x 14' deck. Defendant solicited and accepted an advance payment from the Terrys of \$4,150.00. Defendant then installed three posts and the four joists for the deck, but did no other work, thereby abandoning the contract. Defendant ignored the Terrys efforts to communicate with him. They did manage to reach him on one occasion only after contacting Defendant's father. During their conversation, Defendant admitted having diverted the Terrys advance payment. Instead of using their money for material to complete their project, Defendant stated that he used their money to make a vehicle installment payment, and did not have funds to purchase materials to begin – let alone complete – the project he

contracted with them to perform. On August 23, 2016, Defendant installed the deck flooring and stair stringers, and was expected to complete the project the next day. Defendant did not return to complete the Terrys' project, again stating he did not have the money to complete the job. The Terrys purchased \$2,000.00 worth of materials on August 25, 2016 so that the project could be completed. Defendant did not return to complete the project. As a result of his fraudulent and deceptive acts, practices, and misrepresentations, Defendant harmed the Terrys in an amount exceeding three thousand dollars. Defendant was not licensed to operate as a contractor when he solicited and accepted their advance payment of \$4,150.00, and for which the Terrys purchased \$25,000.00 worth of materials.

[¶9] On or about August 31, 2016, Defendant, doing business as NailedIt Home Improvements, contracted with North Dakota consumer Carmen Rohr, 7460 Brynley Blvd., Horace, ND 58047, to construct a garage on her property for a total price of \$16,480.00. On August 31, 2016, Defendant solicited and accepted an advance deposit of \$16,480.00 from Ms. Rohr. A subcontractor, on behalf of Defendant, poured concrete for the garage and driveway. Defendant framed and shingled the garage, but did no further work and did not complete the project, abandoning the project. Ms. Rohr later learned that Defendant did not shingle to code, and, therefore, another contractor had to add bracing to ensure the integrity of the garage. Defendant failed to pay his subcontractor who poured the concrete for Ms. Rohr's project. It also appeared to Ms. Rohr that Defendant diverted her advance payment and used her money to take a vacation in Bora Bora. As a result of his fraudulent and deceptive acts, practices, and misrepresentations, Defendant harmed Ms. Rohr in an amount exceeding three

thousand dollars. Defendant was not licensed to operate as a contractor when he solicited and accepted Ms. Rohr's advance payment of \$16,480.00.

II. CONCLUSIONS OF LAW

[¶10]The State of North Dakota brought this action on the relation of Wayne Stenehjem, Attorney General of the State of North Dakota, in the public interest pursuant to N.D.C.C. ch. 51-15. The State of North Dakota ex rel. Wayne Stenehjem, Attorney General, has authority to act in this matter pursuant to N.D.C.C. ch. 51-15;

[¶11]The Court has subject matter jurisdiction pursuant to N.D.C.C. § 51-15-07;

[¶12]The Court has personal jurisdiction over Defendant.

[¶13]Under N.D.C.C. §§ 51-15-07, 51-15-10, and 51-15-11 the district court has jurisdiction to enter appropriate orders.

[¶14]The venue of this action in Cass County is proper under N.D.C.C. § 28-04-05 and § 28-04-03 because Defendant resides in Cass County.

[¶15]There is no material issue of fact preventing an entry of summary judgment as a matter of law.

[¶16]Defendant is or was engaged in the advertisement, solicitation, and sale of merchandise, as that term is defined in N.D.C.C. § 51-15-01, in the State of North Dakota, including services as a contractor within the meaning of N.D.C.C. § 43-07-01.

[¶17]In connection with the solicitation and sale of merchandise, Defendant made untrue, deceptive, and misleading representations with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02. Defendant's actions constituted false pretense, false representation, or actual fraud.

[¶18] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, without a contractor license issued by the North Dakota Secretary of State, engaged in the business or acted in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars when he contracted with consumers Kevin and Luci Terry ("the Terrys") and Carmen Rohr ("Rohr").

[¶19] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant abandoned a contract without legal excuse after a deposit of money or other consideration has been provided to him. The presumption of abandonment arose because Defendant, in violation of N.D.C.C. § 43-07-14(1)(a), failed to substantially commence any work as agreed upon within ninety days of the contract date if no starting date was agreed upon in writing. Defendant abandoned the contracts he entered into with the Terrys and Rohr.

[¶20] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(b), diverted funds or property received under express agreement for the prosecution or completion of a specific contract, or for a specified purpose in the prosecution or completion of a contract, and applied or used the funds for another contract obligation or to defraud or deceive the owner when Defendant diverted the advance payments received from consumers the Terrys and Rohr.

[¶21] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(c), engaged in fraudulent or deceptive acts or practices or

misrepresentations as a contractor in consequence of which one or more persons was injured in a total amount exceeding three thousand dollars when Defendant abandoned the contract he entered into with, and diverted the advance payment received from, consumers the Terrys and Rohr.

[¶22]In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(f), failed to refund fully a contracting party's advance payment after a rebuttable presumption of abandonment arose and the contracting party made a request to Defendant for a refund when Defendant failed to fully refund consumers the Terrys and Rohr.

[¶23]Under N.D.C.C. § 43-07-14(3), Defendant's violations of N.D.C.C. § 43-07-02, acting in in the capacity of a contractor where the cost, value, or price per job is over four thousand dollars, constitute violations of N.D.C.C. ch. 51-15.

[¶24]Under N.D.C.C. § 43-07-14(3), Defendant's violations of N.D.C.C. § 43-07-14 constitute violations of N.D.C.C. ch. 51-15.

[¶25]In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant through written and oral representations made by Defendant, his agents, employees, or representatives, made untrue, deceptive, and misleading representations, or engaged in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, when Defendant expressly, impliedly, or by omission falsely represented to consumers the Terrys and Rohr that he was a licensed contractor by soliciting and accepting

business above the North Dakota statutory amount of four thousand dollars while operating the contracting business "NailedIt Home Improvements."

[¶26]In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant through written and oral representations made by Defendant, his agents, employees, or representatives, made untrue, deceptive, and misleading representations, or engaged in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, when Defendant misrepresented his intent or ability to perform services as a contractor for consumers the Terrys and Rohr and, instead of purchasing materials or rendering services with their advance deposits, used consumer advance deposits for personal expenses.

[¶27]Injunctive relief is necessary and appropriate in this case in order to prohibit Defendant from engaging in continued or future violations of N.D.C.C. § 51-15-02, and injunctive relief is justifiable under the circumstances of this case.

[¶28]Defendant is liable to pay such restitution necessary to restore any loss suffered by persons as a result of their deceptive acts or practices, pursuant to N.D.C.C. § 51-15-07.

[¶29]Defendant is liable to pay the Attorney General for the fees and costs incurred in investigating and prosecuting this matter, pursuant to N.D.C.C. § 51-15-10.

[¶30]Civil penalties are appropriate in this case based on Defendant's conduct.

ORDER FOR JUDGMENT

[¶31]THEREFORE, IT IS HEREBY ORDERED pursuant to N.D.C.C. § 51-15-02 et seq., that:

- A. Plaintiff's Motion for Summary Judgment is granted.

B. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the contractor law, N.D.C.C. § 43-07-02, for engaging in the business or acting in the capacity of a contractor in North Dakota without first having a license when the cost, value, or price per job exceeded the sum of four thousand dollars.

C. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for abandoning contracts without legal excuse after a deposit of money or other consideration has been provided in violation of N.D.C.C. § 43-07-14(1)(a).

D. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for diverting funds or property received under express agreement for the prosecution or completion of a specified contract, or for a specified purpose in the prosecution or completion of any contract, and applying or using funds and property for another contract obligation or to defraud or deceive creditors or the owner in violation of N.D.C.C. § 43-07-14(1)(b).

E. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in excess of three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

F. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02,

for failing to refund fully a contracting party's advance payment where a rebuttable presumption of abandonment has arisen and a contracting party has made a request for a refund in violation of N.D.C.C. § 43-07-14(1)(f).

G. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

H. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

I. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

J. That Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services in accordance with paragraph K.

K. That, pursuant to N.D.C.C. § 51-15-07, Defendant Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work. Notwithstanding the permanent injunction, Defendant may engage in future contracting services if Defendant applies to the Attorney General and the Court to lift the permanent injunction and the Court finds Defendant has fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Three or more years have expired since the entry of judgment herein;
2. Defendant has paid in full all restitution to consumers pursuant to the judgment herein;
3. Defendant has paid in full restitution to all consumers that have paid Defendant advance payments for services not performed or merchandise not delivered in the state of North Dakota;
4. Defendant has paid all amounts owed to the Attorney General pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendant, or after a hearing, that Defendant is sufficiently rehabilitated pursuant to the terms and conditions herein, the Defendant, upon order of the Court, may engage in contracting provided they have obtained a Contractor License pursuant to N.D.C.C. ch. 43-07 and has complied with all contractor licensing requirements appropriate and necessary for the work to be undertaken by him.

"Pay in full" or "paid in full" mean that all amounts must be paid, and does not include any settlement, forgiveness, compromise, reduction, or discharge of any of the debts or refund obligations.

L. That in the event Collin Strehlow, doing business as NailedIt Home Improvements, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is lawfully engaged in contracting pursuant to the terms in this judgment, said Defendant, pursuant to N.D.C.C. § 51-15-07 and for a period of three years after becoming, lawfully engaged in contracting, is enjoined and restrained from soliciting or accepting from consumers advance payments or consumer deposits in excess of ten percent of the total contract price in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3).

M. That, pursuant to N.D.C.C. § 47-25-02(3), Defendant's trade name, NailedIt Home Improvements, is ordered cancelled for Defendant's use of the trade name to engage in violations of N.D.C.C. chs. 43-07 and 51-15.

N. That Plaintiff shall have Judgment against Defendant Collin Strehlow in the amount of \$2,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

O. That Plaintiff shall have Judgment against Defendant Collin Strehlow in the amount of \$3,000.00 for costs, expenses, and attorney's fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

P. That Defendant Collin Strehlow, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been acquired by Defendant by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

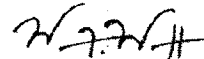
Q. The Judgment entered shall be a Judgment for which execution may issue.

R. Interest shall accrue on this Judgment in accordance with the interest rate on judgment as provided by N.D.C.C. § 28-20-34.

Dated this _____ day of _____, 2018

BY THE COURT:

Signed: 3/12/2018 2:03:51 PM



Honorable Wade L. Webb
District Court Judge